

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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KEITH DILLMAN,

CASE NO. CIV. S-05-0645 WBS CMK

Plaintiff,

v.

ORDER TO SHOW CAUSE RE: CONTEMPT

JO ANNE B. BARNHART,
Commissioner of Social
Security

Defendant.

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Plaintiff, represented by retained counsel Eugenie Denise Mitchell, of the Sacramento law firm of Brewer & Mitchell, LLP, filed this action for judicial review of a final decision of the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g).

Pursuant to Local Rule 72-302(c) (21), the matter was referred to a United States Magistrate Judge, who on May 3, 2005, issued a scheduling order requiring, among other things, that plaintiff complete service of process and serve a copy of the scheduling order on defendant, within 20 days from the filing of

1 the complaint, and that within ten days after completing service
2 of process plaintiff file with the clerk a certificate reflecting
3 such service. Plaintiff failed to file any certificate in
4 accordance with that order.

5 On September 21, 2005, the magistrate judge issued an
6 Order to Show Cause giving plaintiff 20 days to show cause in
7 writing why this action should not be dismissed for lack of
8 prosecution and failure to comply with rules and court order.

9 See Local Rule 11-110. Plaintiff failed to respond to the Order
10 to Show Cause. Therefore, on October 21, 2005, the magistrate
11 judge filed Findings and Recommendations recommending that this
12 action be dismissed.

13 Those Findings and Recommendations were served on
14 plaintiff's attorney and contained notice that any objections to
15 the findings and recommendations were to be filed within ten
16 days. Plaintiff did not file objections to the findings and
17 recommendations.

18 Accordingly, on December 5, 2005, this court ordered
19 that on or before December 12, 2005, plaintiff's attorney file
20 with the court either a written opposition to the findings and
21 recommendations of the magistrate judge or a written statement of
22 non-opposition to the dismissal of this action. This court's
23 written order further provided that if plaintiff's counsel did
24 not file a written statement in accordance with that order, she
25 shall appear personally in Department 5 of this court at 9:00
26 a.m. on December 19, 2005 for status conference.

27 Plaintiff's attorney did not file either an opposition
28 or a statement of non opposition. The clerk of this court called

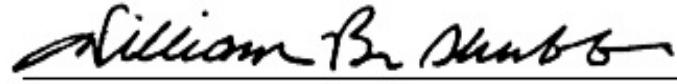
1 the office of plaintiff's attorney three times between December
2 1, and December 16 and, unable to reach anyone other than a
3 recording, left voice mail messages for both Ms. Mitchell and Ms.
4 Brewer, none of which were returned. Accordingly, the matter
5 came on regularly for hearing at 9:00 a.m. on December 19, 2005.
6 Assistant United States Attorney Bobbie Montoya was present as an
7 observer, but no appearance was made by plaintiff's attorney or
8 anyone else on her behalf.

9 NOW, THEREFORE, IT IS ORDERED that plaintiff's
10 attorney, Eugenie Denise Mitchell, appear in this court
11 personally at 9:00 a.m. on January 3, 2006, in Department 5 of
12 the above entitled court, 501 I Street, Sacramento, California,
13 to show cause why she should not be adjudged in contempt and
14 sanctioned accordingly.

15 Ms. Mitchell is hereby informed that if she does not
16 personally appear at the time and place directed in the preceding
17 paragraph, the court will order the United States Marshal to pick
18 her up and bring her before the court forthwith, and that if
19 there is any period of time between the time she is picked up and
20 the time she can be brought before the court she may have to
21 spend that time in a jail cell.

22 IT IS SO ORDERED.

23 DATED: December 19, 2005

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26 WILLIAM B. SHUBB
27 UNITED STATES DISTRICT JUDGE
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